

## **REMARKS**

Claims 1-31 are pending in the present application, were examined and stand rejected. In response, Claims 1, 12, 22 and 31 are amended, no claims are cancelled and no claims are added. Applicants respectfully request reconsideration of pending Claims 1-31 in view of at least the following remarks. Reconsideration and withdrawal of the rejections of record are requested in view of such amendments and the following discussion.

### **I. Double Patenting Rejection**

The Examiner rejects Claims 1-5, 7-9, 12-14, 16-19, 22-26 and 28-30 of Applicants' invention under the provisional obviousness-type double patenting rejection as not patentably distinct from Claims 1-8, 15, 17, 19, 23-29 and 34-36 of co-pending U.S. Patent Application No. 09/823,484, although the conflicting claims are not identical. Applicants hold in abeyance this rejection until such time as the claims on which the rejection is premised are granted.

The Examiner rejects Claims 10, 11, 20, 21 and 27 of Applicants' invention under the provisional obviousness-type double patenting rejection as not patentably distinct from Claims 1, 3-5, 7-9, 11-18 and 21-28 of co-pending U.S. Patent Application No. 09/823,484 and Claims 6, 19 and 28 in view of U.S. Patent No. 5,566,174 issued to Sato ("Sato"). Applicants hold in abeyance this rejection until such time as the claims on which the rejection is premised are granted.

### **II. Claims Rejected Under 35 U.S.C. §103**

The Examiner has rejected Claims 1, 4, 5, 7-9, 12, 16-19, 22, 24-26 and 28-30 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application No. 2005/0155063 to Bayrakeri et al. ("Bayrakeri") in view of U.S. Patent No. 5,619,247 issued to Russo ("Russo"). Applicants respectfully traverse this rejection.

Regarding Claims 1 and 22, Claims 1 and 22 are amended to recite the following claim features, which are neither taught nor suggested by the combination of Bayrakeri in view of Russo:

acquiring, by a service provider system, service information regarding broadcast service content to be broadcast by a broadcast service system over a predetermined period of time;

broadcasting, to one or more client systems, a composite content list including meta-data describing service provider content available from a service provider system and the broadcast service content to be broadcast by the broadcast service system;

rating the service provider content and broadcast service content, described by the composite content list according to ratings for the service provider content and broadcast service content received from the one or more client systems. (Emphasis added.)

According to the Examiner, Bayrakeri discloses:

Acquiring network service information regarding the broadcast service content to be broadcast by a broadcast service system over a predetermined period of time. ([0176]; [0195]; [0179]; [0181]; [0182]) (See, pg. 16, §5 of the Office Action mailed April 6, 2006.)

As further indicated in the Examiner's response to Applicants' arguments, the CNN broadcast network refers to service provider content available from a service provider system and the ABC broadcast network refers to broadcast service content to be broadcast by a broadcast service system. (See, pg. 2, §4 of the Office Action mailed April 6, 2006.) Applicants respectfully disagree with the Examiner's contention.

Applicants respectfully submit that broadcast networks, such as ABC and CNN, as referred to by the Examiner, are known by those skilled in the art as networks. Assuming, *arguendo*, that CNN referred to service provider content available from a service provider system, as indicated by the Examiner, Claims 1 and 22 are amended to recite the following claim feature, which is neither disclosed, taught nor suggested by the combination of Bayrakeri in view of Russo:

acquiring, by a service provider system, service information regarding broadcast service content to be broadcast by a broadcast service system over a predetermined period of time. (Emphasis added.)

As recited by Claims 1 and 22, the service provider system acquires service information regarding broadcast service content to be broadcast by a broadcast service system over a predetermined period of time. As described in Applicants' specification and known to those skilled in the art, service information, or SI, is generally used to announce the availability of an acquisition parameter for content. These announcements are consumed by a receiver's electronic program guide (EPG) and are used to present and acquire programming. (See, pg. 12, ¶0051 of Applicants' Specification.)

Applicants respectfully submit that assuming CNN refers to service provider content available from a service provider system, Applicants respectfully submit that there is no disclosure, teaching nor suggestion within Bayrakeri or Russo, whether viewed in combination or in isolation, regarding the acquisition of service information, or SI, regarding content that is to be broadcast by a broadcast service system. Regarding the Examiner's citing of Russo, Russo fails to rectify the deficiencies of Bayrakeri in teaching or suggesting the above-recited feature of Claims 1 and 22, as amended.

Furthermore, according to the Examiner, Bayrakeri discloses:

a composite content list including meta-data describing service provider content available from a service provider system and the broadcast service content to be broadcast by the broadcast service system ([0176]; [0179]; [0181]; [0182]; as shown in fig. 3A-C, ABC and CNN are from a service provider and broadcast source, respectively). (pp. 16-17, ¶6 of the Office Action mailed April 6, 2005.)

In contrast to the above-recited features of amended Claims 1 and 22, Bayrakeri discloses a server centric customized interactive program guide (IPG) in an interactive television environment. As taught by Bayrakeri:

The custom-IPG allows each viewer to create an IPG based on the viewer's preference, and is highly desirable in providing an enjoyable viewer experience. With the custom-IPG, search time for the desired programs can be reduced, the likelihood of not finding the desired programs among the clutter of programs and channels can be minimized, viewer satisfaction may be enhanced, and other benefits may also be realized. (pg. 1, ¶0012, lines 3-10.) (Emphasis added.)

As indicated above, Bayrakeri is directed to deficiencies associated with systems for providing an interactive listing of a vast array of channel offerings, for example, as provided by such companies as Starlight Telecast Incorporated and TV Guide. (See, pg. 1, ¶009, lines 2-11.) In other words, Bayrakeri is directed to customizing the manner in which an electronic program guide is presented to a user and hence, provides no teaching nor suggestion regarding how such content is selected, such as in response to ratings received from one or more client system, as recited by amended Claims 1 and 22.

In contrast to the teachings of Bayrakeri, amended Claims 1 and 22 are directed a method and apparatus for combining broadcast schedules and content on a digital broadcast enabled client platform to expand content available to a user. As indicated by Applicants' specification:

The service provider broadcast system 150 is designed to work in conjunction with a standard broadcast system, such as the broadcast service system 100, as depicted in FIG. 1. As will be described in further detail below, the service provider broadcast system enables companies or broadcast systems who want to optimize pay-per view royalties or subscription fees to combine their existing broadcast content with digital broadcast cached content provided by a service provider broadcast system. (pg. 7, ¶00036, lines 2-8.) (Emphasis added.)

As further described by Applicants' specification:

The broadcast server 103 is configured to broadcast a plurality of broadcast service content data files 101, which may be received by clients 155, 157 and 159. In addition, the broadcast server 103 allocates bandwidth to the service provider server 153 in order to broadcast a plurality of provider content data files 151, which are also received by clients 155, 157 and 159. (pg. 8, ¶00038, lines 1-5.) (Emphasis added.)

Based on the cited passages above, Applicants respectfully submit the composite content list, including metadata describing service provider content available from a service provider system and broadcast service content to be broadcast by a broadcast service system, as recited by amended Claims 1 and 22, is neither taught nor suggested by FIGS. 3A-3C of Bayrakeri, which illustrate ABC and CNN, which refer to broadcast networks. Applicants submit that ABC and CNN refer to broadcast networks, the content of which is broadcast by, for example, a broadcast service system, for example, as recited by amended Claims 1 and 22, to provide broadcast service content.

Furthermore, Claims 1 and 22, as amended, recite that the composite content list is broadcast to one or more client systems. In a response to such broadcast, the one or more client systems provides ratings of the service provider content and the broadcast service content, which are used to rate the service provider content and broadcast service content prior to broadcast thereof by a broadcast service system, as recited by amended Claims 1 and 22.

Applicants respectfully submit that the Examiner's citing of Russo does not rectify the above-described deficiency of Bayrakeri. As mandated by case law, to establish *prima facie* obviousness of the claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Here, for at least the reasons described above, Applicants respectfully submit that the combination of Bayrakeri in view of Russo fails to teach or suggest a service provider

system, which acquires service information regarding broadcast service content to be broadcast by a broadcast service system over a predetermined period of time, as recited by amended Claims 1 and 22. Applicants respectfully submit that neither of the examples of CNN and ABC, cited by the Examiner as being from a service provider and a broadcast source, respectfully, (*see*, pg. 15, ¶1 of the Office Action mailed April 6, 2006) acquire service information, as recited by Claims 1 and 22. Hence, Applicants respectfully submit that for the reasons provided above, the Examiner fails to establish a *prima facie* case of obviousness of the claimed invention since all claim limitations recited by amended Claims 1 and 22 are neither taught nor suggested by the prior art combination of Bayrakeri in view of Russo.

Furthermore, for at least the reasons described above, Applicants respectfully submit that the combination of Bayrakeri in view of Russo neither teaches nor suggests the broadcast of a composite content list, including metadata describing service provider content available from a service provider system and broadcast service content to be broadcast by a broadcast service system, as recited by amended Claims 1 and 22. As indicated above, the broadcast networks of ABC and CNN, referred to in FIGS. 3A-3C of Bayrakeri, do not refer to either a broadcast service system or service provider system, as recited by amended Claims 1 and 22, but actually refer to broadcast networks, content of which would be broadcast as broadcast service content by, for example, the broadcast service system recited by amended Claims 1 and 22.

Consequently, Applicants respectfully submit that the Examiner fails to establish a *prima facie* case of obviousness of amended Claims 1 and 22, since all claim limitations recited by amended Claims 1 and 22 are neither taught nor suggested by the prior art combination of Bayrakeri in view of Russo. Id.

Therefore, Applicants respectfully submit that Claims 1 and 22, as amended, are patentable over the combination of Bayrakeri in view of Russo, since such combination does not teach or suggest all claim limitations recited by amended Claims 1 and 22. Id. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 1 and 22.

Regarding Claims 4 and 5, Claims 4 and 5, based on their dependency from Claim 1, are also patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 4 and 5.

Regarding Claim 24, Claim 24, based on its dependency from Claims 22, is also patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claim 24.

Regarding Claim 12, Claim 12 recites the following claim features, which are neither disclosed nor suggested by the combination of Bayrakeri in view of Russo:

acquire, by a service provider system, service information regarding broadcast service content to be broadcast by a broadcast service system over a predetermined period of time,  
create a composite content list including meta-data describing service provider content available from a service provider system and the broadcast service content to be broadcast by the broadcast service system,  
broadcast the composite content list to one or more client systems,  
rate the service provider and broadcast service content described by the composite content list. (Emphasis added.)

Applicants respectfully submit that the above-recited features of Claim 12 are analogous to the amended claim features of Claims 1 and 22, as described above. Accordingly, Applicants' arguments with reference to the §103(a) rejection of Claims 1 and 22 equally apply to the Examiner's rejection of Claim 12 as obvious in view of Bayrakeri in view of Russo under §103(a).

As indicated above with reference to the §103(a) rejection of Claims 1 and 22, ABC and CNN, which are illustrated in FIGS. 3A-3C of Bayrakeri, refer to broadcast networks, which as indicated above, would be broadcast as broadcast service content by, for example, the broadcast service system recited by Claim 12. Consequently, for at least the reasons described above, Applicants respectfully submit that the Examiner fails to establish a *prima facie* case of obviousness of Claim 12, since the combination of Bayrakeri in view of Russo fails to teach at least the acquisition of service information to create of a composite content list, which includes metadata describing service provider content available from a service provider system and the broadcast service content to be broadcast by a broadcast service

system, as well as the broadcast of such composite content list to one or more client systems. Id.

Accordingly, for at least the reasons indicated above, Claim 12 is patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claim 12.

Regarding Claim 16, Claim 16, based on its dependency from Claim 12, is also patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claim 16.

Regarding Claims 7, 17 and 25, Claims 7, 17 and 25 recite the following claim feature, which is neither disclosed nor suggested by the combination of Bayrakeri in view of Russo:

rating, in response to a content rating table, at least one content data file from service provider content available from a service provider system and broadcast service content to be broadcast by a broadcast service system, as described by a composite content list received from the broadcast service system, the content rating table generated responsive to a user. (Emphasis added.)

As indicated by the Examiner at pp. 17 and 18, last paragraph of the Office Action mailed October 6, 2005, the Examiner equates ABC and CNN, which are shown in FIGS. 3A-3C of Bayrakeri as a service provider and broadcast source, respectively. For at least the reasons indicated above regarding the §103(a) rejection of Claims 1 and 22, Applicants respectfully submit that ABC and CNN refer to broadcast networks, the content of which is broadcast by a broadcast service system according to a channel associated with the respective broadcast network. In contrast, as indicated above, the broadcast service system, as recited by Claims 7, 17 and 25, would allocate a channel to broadcast networks, such as ABC and CNN, such that their content is carried as broadcast service content to be broadcast by the broadcast service system.

Furthermore, Applicants respectfully submit that the ability provided by Bayrakeri to enable a viewer to create an interactive program guide based on the viewer's preferences does not equate to any rating of content by such user, as recited by Claims 7, 17 and 25. Conversely, Bayrakeri teaches the formation of a, with this captor (?) IPG, custom IPG,

search time for desired programs can be reduced and the likelihood of not finding the desired program among the clutter of programs and channels can be minimized such that viewer satisfaction may be enhanced and other benefits may be realized. (See, pg. 1, ¶12, lines 3-10.)

Accordingly, for at least the reasons indicated above, Applicants respectfully submit that the combination of Bayrakeri in view of Russo, fails to teach or suggest the rating of at least one content data file from service provider content available from a service provider system and the broadcast service content to be broadcast by a broadcast service system as described by a composite content list from the broadcast service system, the content rating table generated responsive to a user, as recited by Claims 7, 15 and 25.

Consequently, Applicants respectfully submit that the Examiner fails to establish a *prima facie* case of obviousness of the claimed invention recited by Claims 1, 17 and 25, since all claim limitations recited by Claims 7, 17 and 25 are neither taught nor suggested by the prior art combination of Bayrakeri in view of Russo. *Id.*

Accordingly, for at least the reasons described above, Applicants respectfully submit that Claims 7, 17 and 25 are patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 7, 17 and 25.

Regarding Claims 8 and 9, Claims 8 and 9, based on their dependency from Claim 7, are also patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 8 and 9.

Regarding Claims 18 and 19, Claims 18 and 19, based on their dependency from Claim 17, are also patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 18 and 19.

Regarding Claim 26, Claim 26, based on its dependency from Claim 25 and for at least the reasons provided above, is also patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claim 26.

Regarding Claim 27, Claim 27 recites the following claim features, which are neither disclosed nor suggested by the combination of Bayrakeri in view of Russo:

a service provider broadcast server; and  
one or more client systems coupled to the service provider broadcast server,

wherein the one or more client systems rate, in response to a content rating table, one or more content data files described by a composite content list, the content rating table generated responsive to content data files previously accessed and the composite content list including meta-data describing service provider content available from a service provider system and broadcast service content to be broadcast by a broadcast service system,

wherein the one or more client systems transmit, to the service provider broadcast server, the ratings of the content data files from the composite content list,

wherein the service provider system selects a portion of the content data files from the service provider content and the broadcast service content in response to the ratings received from the one or more client systems,

wherein the service provider system further broadcasts a broadcast schedule for the selected portion of the broadcast service content to the one or more client systems, prior to broadcast by the broadcast service system, to enable the one or more client systems to store one or more content data files from the selected portion of broadcast service content, and

wherein the service provider broadcast server further broadcasts the selected portion of the service provider content to the one or more client systems. (Emphasis added.)

Applicants respectfully submit that the above-recited features of Claim 28 include features of Claims 12 and 17. Accordingly, for at least the reasons provided above with reference to the Examiner's rejection of Claims 12 and 17 under 35 U.S.C. §103(a) as obvious in view of the combination of Bayrakeri in view of Russo, Applicants respectfully submit that such arguments equally apply to the Examiner's rejection of Claim 28 as obvious in view of the combination of Bayrakeri in view of Russo.

Consequently, for at least the reasons provided above, Applicants respectfully submit that Claim 28 is patentable over the combination of Bayrakeri in view of Russo, since the combination fails to teach or suggest each claim limitation recited by Claim 28 and specifically, fails to suggest at least rating of the one or more content data files described by the composite content list, including metadata as describing service provider content available from the service provider system and broadcast service content to be broadcast by a broadcast service system. Id.

Accordingly, for at least the reasons described above, Applicants respectfully submit that Claim 28 is patentable over the combination of Bayrakeri in view of Russo.

Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claim 28.

Regarding Claims 29 and 30, Claims 29 and 30, based on their dependency from Claim 28, are also patentable over the combination of Bayrakeri in view of Russo. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 29 and 30.

The Examiner has rejected Claims 10, 11, 20, 21 and 27 under 35 U.S.C. §103(a) as being unpatentable over Bayrakeri in view of Russo and further in view of Sato. Applicants respectfully traverse this rejection.

Regarding the Examiner's citing of Sato, Applicants respectfully submit that the Examiner's citing of Sato fails to rectify the deficiencies of the combination of Bayrakeri in view of Russo to teach or suggest rating, in response to a content rating table, at least one content data file from service provider content available from a service provider system and the broadcast service content to be broadcast by a broadcast service system, as described by a composite content list from the broadcast service system, the content rating table generated responsive to a user, as recited by independent Claims 7, 17 and 25.

Accordingly, Applicants respectfully submit that for at least the reasons described above, independent Claims 7, 17 and 25 are patentable over the combination of Bayrakeri in view of Russo and further in view of Sato.

Accordingly, regarding Claims 10 and 11, Claims 10 and 11, based on their dependency from Claim 7, are also patentable over the combination of Bayrakeri in view of Russo and further in view of Sato. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 10 and 11.

Regarding Claims 20 and 21, Claims 20 and 21, based on their dependency from Claim 17, are also patentable over the combination of Bayrakeri in view of Russo and further in view of Sato. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claims 20 and 21.

Regarding Claim 27, Claim 27, based on its dependency from Claim 25, is also patentable over the combination of Bayrakeri in view of Russo and further in view of Sato.

Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §103(a) rejection of Claim 27.

Regarding Claim 31, Claim 31 incorporates allowable subject matter of Claim 2 into Claim 1. Accordingly, Applicants respectfully request that the Examiner allow Claim 31.

**II. Allowable Subject Matter**

The Examiner has indicated that Claims 2, 3, 6, 13-15 and 23 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims.

Regarding Claims 2, 3, 6, 13-15 and 23, Applicants respectfully would like to thank the Examiner for recognizing the allowability of such claims. However, such claims are also patentable, based on the amendments made to independent Claims 1, 12 and 22.

Consequently, for at least the reasons provided above, Applicants respectfully request that the Examiner reconsider and withdraw the objection to Claims 2, 3, 6, 13-15 and 23 and allow such claims based on their dependency from independent Claims 1, 12 and 22.

## CONCLUSION

In view of the foregoing, it is submitted that Claims 1-31, as amended, patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

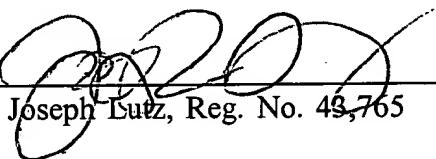
If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: July 6, 2006

By:

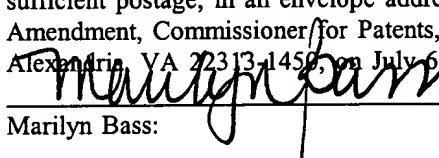


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July 6, 2006